

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RHETT E. TAYLOR and LAURIE D.
11 TAYLOR,

12 v.
13 Plaintiffs,

14 PNC BANK, NATIONAL ASSOCIATION,

15 Defendant.

16 CASE NO. C19-1142-JCC

17 ORDER

18 This matter comes before the Court on Plaintiffs' motion for summary judgement (Dkt.
19 No. 30). Having considered the parties' briefing and the relevant record, the Court hereby
20 GRANTS the motion for the reasons explained herein.

21 **I. BACKGROUND**

22 Plaintiffs are the record owners of real property located at 6228 165th Pl. SW,
23 Lynnwood, WA 98037-2725. (Dkt. No. 1 at 2.) On March 6, 2007, Plaintiffs borrowed \$150,000
24 from National City Bank on a home equity line of credit (the "HELOC loan"). (*Id.*) Plaintiffs
25 executed an equity reserve agreement and a deed of trust that was recorded against the property.
26 (*Id.* at 2-3; *see* Dkt. Nos. 1-3 at 2-7, 1-4 at 2-8.) The equity reserve agreement reflected an
"open-end line of credit" whose "total amount will be required to be repaid in two hundred forty
(240) equal monthly payments." (Dkt. No. 1-3 at 2, 4.) The deed of trust established a lien

1 against the property and had a maturity date of March 6, 2037. (Dkt. No. 1-4 at 2-3.) The listed
 2 events of default under the deed of trust included fraud, failure to make a timely payment, and
 3 Plaintiffs taking any action or inaction adversely affecting the property or Defendant's rights in
 4 the property. (*Id.* at 5.) Under the deed of trust, Defendant's remedies for an event of default
 5 included acceleration of the debt and foreclosure of the property. (*Id.*) The HELOC loan is
 6 currently owned by Defendant and had a balance of \$152,885.47 on June 11, 2019. (Dkt. No. 1
 7 at 3.)

8 On February 11, 2011, Plaintiffs filed a Chapter 7 bankruptcy petition in the U.S.
 9 Bankruptcy Court for the Western District of Washington. (*Id.*) Plaintiffs included the HELOC
 10 loan under schedule D of their bankruptcy petition. (*See* Dkt. No. 34-1 at 2.) On March 9, 2011,
 11 while their bankruptcy proceedings were ongoing, Plaintiffs sent Defendant a letter with the
 12 routing numbers for a business account and a copy of a voided check for that account. (*See* Dkt.
 13 No. 39-1 at 26.) The letter authorized PNC Bank to automatically charge Plaintiffs' business
 14 account \$237.57 to service the HELOC loan. (*Id.*) On May 23, 2011, the bankruptcy court
 15 granted Plaintiffs a discharge pursuant to 11 U.S.C. § 727. (*See* Dkt. Nos. 1 at 3, 1-5 at 2.)

16 After discharge, Plaintiffs' business account records indicate that, apart from July 2011,
 17 Defendant externally withdrew \$237.57 each month from May 18, 2011, to October 18, 2011,
 18 and withdrew \$247.78 on November 14, 2011. (*See* Dkt. No. 41-1 at 5-30, 34). Defendant's
 19 records label these transactions as "PAYMENT." (*Compare id.* at 5-34, *with* Dkt. No. 39-1 at
 20 36-54.) Neither Plaintiffs' nor Defendant's records indicate that Defendant withdrew similar
 21 payments from Plaintiff's business account after November 14, 2011. (*See* Dkt. Nos. 39-1 at 57-
 22 64, 41-1 at 39-59.)

23 However, Defendant's records also show that other payments were made at the end of
 24 each month from May 2011 to January 2012 matching the "[t]otal minimum payment due" from
 25 the preceding month. (*See* Dkt. No. 39-1 at 36-61.) Defendant's records label these payments as
 26

1 “AUTO-PAY.” (*Id.*) Plaintiffs’ business accounts do not reflect these payments.¹ (*See generally*
 2 Dkt. No. 41-1.)

3 On May 23, 2012, Plaintiff Rhett Taylor called Defendant to say he would confer with
 4 Plaintiff Laurie Taylor about whether they would make a voluntary payment on the HELOC loan
 5 and that he would call back the next day. (*See* Dkt. No. 39-1 at 79.) Defendant’s records do not
 6 show that Mr. Taylor called Defendant back. (*Id.*) On July 26, 2013, Mr. Taylor told Defendant
 7 he was working with the lender of Plaintiffs’ first lien mortgage loan to prevent a foreclosure
 8 sale on the property. (*Id.* at 76.) Defendant interpreted Mr. Taylor to mean that Plaintiffs
 9 intended to honor the HELOC loan to protect their interest in the property. (*See* Dkt. No. 39 at
 10 3.)

11 In May 2018, over the course of several phone calls to Defendant, Mrs. Taylor asked that
 12 Defendant’s lien on the property be removed pursuant to the bankruptcy discharge and, when
 13 Defendant declined, expressed a desire to negotiate a settlement on the HELOC loan. (Dkt. Nos.
 14 39 at 4, 39-1 at 72–73.) In May 2019, Plaintiffs notified Defendant that they intended to legally
 15 challenge their obligations under the HELOC loan. (*Id.* at 70.)

16 On July 23, 2019, Plaintiffs filed their complaint in this action seeking to quiet title to the
 17 property. (Dkt. No. 1.) Plaintiffs now move for summary judgment on their quiet title claim.
 18 (Dkt. No. 30.) Plaintiffs assert that “even when accounting for any possible tolling due to
 19 payments made after the discharge, any actions to foreclos[e] on the Deed of Trust are barred by
 20 the statute of limitations.” (*Id.* at 1.)

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23 ¹ Defendant alleges that on January 31, 2012, Plaintiffs sent Defendant a written check that was
 24 declined for insufficient funds. (Dkt. No. 39 at 3.) Defendant’s records do not show that
 25 Plaintiffs sent Defendant a check in January or that any such check was bounced. (*See generally*
 26 Dkt. No. 39-1.) On February 6, 2012, Defendant’s records show a transaction labelled
 “ADJUSTMENT-PAYMENTS” in the same amount as payment on January 31, 2012. (*Id.* at
 64.)

1 **II. DISCUSSION**

2 **A. Legal Standard**

3 “The court shall grant summary judgment if the movant shows that there is no genuine
 4 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
 5 Civ. P. 56(a). Material facts are those that may affect the outcome of the case, and a dispute
 6 about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a
 7 verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986).
 8 In deciding whether there is a genuine dispute of material fact, the court must view the facts and
 9 justifiable inferences to be drawn therefrom in the light most favorable to the nonmoving party.
 10 *Id.* at 255. The court is therefore prohibited from weighing the evidence or resolving disputed
 11 issues in the moving party’s favor. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

12 “The moving party bears the initial burden of establishing the absence of a genuine issue
 13 of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “If a moving party fails to
 14 carry its initial burden of production, the nonmoving party has no obligation to produce anything,
 15 even if the nonmoving party would have the ultimate burden of persuasion at trial.” *Nissan Fire*
 16 & *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000). But once the moving
 17 party properly supports its motion, the nonmoving party “must come forward with ‘specific facts
 18 showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio*
 19 *Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Ultimately, summary judgment
 20 is appropriate against a party who “fails to make a showing sufficient to establish the existence
 21 of an element essential to that party’s case, and on which that party will bear the burden of proof
 22 at trial.” *Celotex*, 477 U.S. at 322.

23 **B. The Statute of Limitations on a Potential Action to Foreclose**

24 Washington law governs the calculation of limitations applicable to a promissory note
 25 issued in Washington. *See Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018).
 26 Under Washington law, promissory notes and deeds of trust are contracts that are subject to a

1 six-year statute of limitations. *See Wash. Rev. Code § 4.16.040(1); Cedar W. Owners Ass'n v.*
 2 *Nationstar Mortg., LLC*, 434 P.3d 554, 559 (Wash. Ct. App. 2019). The six-year statute of
 3 limitations on a deed of trust accrues “when the party is entitled to enforce the obligations of the
 4 note.” *Wash. Fed., Nat'l Ass'n v. Azure Chelan LLC*, 382 P.3d 20, 30 (Wash. Ct. App. 2016).

5 When a promissory note and deed of trust are payable in installments, the six-year statute
 6 of limitations accrues for each monthly installment from the time it becomes due. *Edmundson v.*
 7 *Bank of Am., N.A.*, 378 P.3d 272, 277 (Wash. Ct. App. 2016) (citing *Herzog v. Herzog*, 161 P.2d
 8 142, 145 (Wash. 1945)). In *Edmundson*, the Washington State Court of Appeals ruled that the
 9 final six-year statute of limitations period began to accrue on the last date that the borrowers
 10 defaulted on a payment before the borrowers’ personal liability was discharged in a bankruptcy
 11 proceeding. 378 P.3d at 278. Washington and federal courts have since followed the legal rule
 12 announced in *Edmundson*. *See, e.g., Jarvis v. Fed. Nat'l Mortg. Ass'n*, 726 F. App'x 666, 667
 13 (9th Cir. 2018); *U.S. Bank NA v. Kendall*, 2019 WL 2750171, slip op. at 4 (Wash. Ct. App. 2019)
 14 (noting that although a deed of trust’s lien is not discharged in bankruptcy, the limitations period
 15 for an enforcement action nonetheless “accrues and begins to run when the last payment was
 16 due” prior to discharge). However, a time-barred action upon an unpaid debt may be revived if
 17 the debtor acknowledges the debt in writing. *See Wash. Rev. Code § 4.16.280; In re Tragopan*
 18 *Props., LLC*, 263 P.3d 613, 614, 616 (Wash. Ct. App. 2011). If the debtor acknowledges a debt
 19 on an installment note, one six-year statutory period begins from the time of acknowledgment.
 20 *See Thacker v. Bank of New York Mellon*, 787 Fed.Appx. 474, 475 (9th Cir. 2019), *aff'g*
 21 *Thacker v. Bank of New York Mellon*, Case No. C18-5562-RJB, Dkt. No. 26 (W.D. Wash. 2019)
 22 (holding that a debtor who defaulted on monthly mortgage payments and had his debts
 23 discharged in bankruptcy restarted a single statutory period when he acknowledged his debt).

24 Here, the statute of limitations has run on a potential action to foreclose the property. The
 25 Court previously held that “Defendant’s ability to enforce the deed of trust began to accrue on
 26 the last date an installment payment was due prior to the discharge.” (Dkt. No. 13 at 4) (citing

1 *Edmundson*, 378 P.3d at 278). The parties do not dispute that the last unpaid installment before
 2 Plaintiffs' discharge was due on April 30, 2011, or that the statute of limitations for that
 3 installment would have expired on April 30, 2017. (See Dkt. Nos. 39 at 7, 40 at 1–2.) Instead,
 4 Defendant contends that the statute of limitations restarted when Plaintiffs acknowledged the
 5 debt on January 31, 2012, by sending Defendants a written check, thereby restarting the statute
 6 of limitations.² (See Dkt. No. 39 at 7–8.) However, Defendant offers no evidence that Plaintiffs
 7 sent Defendant a check, and Defendant's records show that Plaintiff's only payment on this date
 8 was an automatic withdrawal. And even assuming that Plaintiffs sent Defendant a check and that
 9 the check acknowledged the debt, the acknowledgment would restart only a single six-year
 10 statute of limitations period.³ See *Thacker*, 787 Fed.Appx. at 475. Defendant does not contend
 11 that Plaintiffs acknowledged their debt again after the payment on January 31, 2012, (see Dkt.
 12 No. 39 at 7–8), and no events occurred after the payment on January 31 that would toll the
 13 statute of limitations, see *Thacker*, Case No. C18-5562-RJB, Dkt. No. 26 at 11 (specifying that
 14 the commencement of nonjudicial foreclosure proceedings and bankruptcy petitions are events
 15 common to the present facts that toll the statute of limitations under Washington law). Thus,
 16 viewing the evidence in the light most favorable to Defendant, the statute of limitations expired
 17 on January 31, 2018. Therefore, Defendant is time-barred from pursuing foreclosure against the
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19 ² To the extent that Defendant also argues that Plaintiffs acknowledged the debt when they sent
 20 Plaintiffs the letter in March 2011 with routing information for Plaintiffs' bank account, that
 21 letter could not have acknowledged the debt because "the debt itself did not exist when the
 22 [l]etter was written." See *Hahn v. Strasser*, Case No. C10-0959-RSM, Dkt. No. 36 at 4–5 (W.D.
 23 Wash. 2011).

24 ³ Defendant incorrectly asserts that the six-year statutory period is properly calculated from the
 25 HELOC loan's maturity date. Defendant appears to rely on the fact that its prospective action
 26 would be "upon the original debt or upon the paper evidencing it." (Dkt. No. 39 at 1–2, 8) (citing
In re Tragopan, 263 P.3d at 616; *Griffin v. Lear*, 212 P. 271, 274 (Wash. 1923)). However, in
Griffin v. Lear, 212 P. 271 (Wash. 1923), the Washington Supreme Court specified only that a
 prospective cause of action would arise from the original debt. *Id.* at 274. *Griffin* did not hold
 that any renewed statute of limitations is calculated from the date of maturity as originally
 envisioned by the loan. See generally *id.*; see also *Thacker*, Case No. C18-5562-RJB, Dkt. No.
 26 at 2–3, 12–13.

1 property.

2 **C. Equitable Estoppel**

3 In its response, Defendant claims that Plaintiffs should be estopped from asserting that
 4 the statute of limitations has passed because Plaintiffs unfairly induced Defendant to believe that
 5 they would repay their obligations on the HELOC loan. (See Dkt. No. 39 at 10–11.)

6 Equitable estoppel claims in Washington courts are governed by Washington law. *See*
 7 *Gibbs v. Farley*, 723 Fed. App'x. 458, 458 (9th Cir. 2018). Estoppel operates to prohibit a party
 8 from raising a statute of limitations defense when (1) the party has made fraudulent or
 9 inequitable statements or actions, (2) the other party has reasonably relied on such statements or
 10 actions, and (3) the other party has been subsequently induced to delay commencing suit until the
 11 applicable statute of limitations expired. *Peterson v. Groves*, 44 P.3d 894, 896 (Wash. Ct. App.
 12 2002) (citing *Robinson v. City of Seattle*, 830 P.3d 318, 345 (Wash. 1992)); *see Covington 18*
 13 *Partners, LLC v. Attu, LLC*, Case No. C19-0253-BJR, Dkt. No. 50 at 21 (W.D. Wash. 2019).
 14 However, a court will enforce the statute of limitations if one party ceased hindering the other
 15 from suing or inducing the other not to sue well before the statute of limitations expired. *Cent.*
 16 *Heat, Inc. v. Daily Olympian, Inc.*, 443 P.2d 544, 549 (Wash. 1968). Since equitable estoppel is
 17 disfavored by courts, the party seeking estoppel must establish it by “clear, cogent, and
 18 convincing evidence.” *Covington*, Case No. C19-0253-BJR, Dkt No. 50 at 21 (citing *Shelcon*
 19 *Const. Group, LLC v. Haymond*, 351 P.3d 895, 902 (Wash. Ct. App. 2015)).

20 Here, Defendant has not established the elements of equitable estoppel. Defendant does
 21 not claim it relied on an affirmative statement or action by Plaintiffs to repay the debt after the
 22 payment on January 31, 2012. (See Dkt. No. 39 at 10–11.) Instead, Defendant alleges it relied on
 23 its own belief that Plaintiffs “never indicated an intent not to pay” the debt during phone calls in
 24 May of 2012 and July of 2013. (*Id.* at 10.) Even assuming that Plaintiffs’ phone calls in May of
 25 2012 and July of 2013 induced Defendant not to sue, Defendant still had “ample time
 26 thereafter” to commence an action: Plaintiffs’ last phone call was in 2013 and the statute of

1 limitations expired, at latest, in January 2018.⁴ *Olympian*, 443 P.2d at 549; *see supra* Section
2 II.B. Similarly, Defendant's reliance on its belief that another lender was pursuing an *in rem*
3 action against the property does not excuse Defendant's failure to act before the statute of
4 limitations expired in January 2018. (See Dkt. No. 39 at 10.) Therefore, Defendant's delay in
5 bringing an action against Plaintiffs was unreasonable.

6 **III. CONCLUSION**

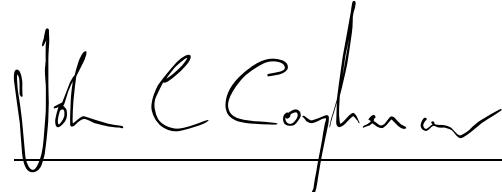
7 For the foregoing reasons, Plaintiffs' motion for summary judgement (Dkt. No. 30) is
8 GRANTED. Plaintiffs Rhett E. Taylor and Laurie D. Taylor are declared to be the record owners
9 of the property located at 6228 165th Pl SW, Lynnwood, WA 98037-2725, identified as Tax
10 Parcel No. 006183-000-031-00, and legally described as follows:

11 Lot 31, Wren Glen No. 2, as per plat recorded in volume 21 of plats, page 110,
12 records of Snohomish County, Washington.

13 Situate in the County of Snohomish, State of Washington,

14 and the Deed of Trust recorded on March 14, 2007, under Snohomish County Recorder's No.
15 200703140732 on the property is time-barred under Wash. Rev. Code § 7.28.300 and hereby
QUIETED.

16 DATED this 31st day of July 2020.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

25 ⁴ Defendant's reliance on Plaintiffs' communications with it in May 2018 is unavailing because
26 those communications occurred after the statute of limitations had run. *See supra* Section II.B.;
(Dkt. No. 39 at 10).